

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CASE NO. 04-43862 RJK**

Michael J. Howe  
SSN XXX-XX-8413  
Tammy J. Howe  
SSN XXX-XX-0985

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Aurora Loan Services (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this objection at 10:15 a.m. on September 16, 2004, before the Honorable Robert J. Kressel in Courtroom 8 West at U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.
3. Any reply to this objection must be filed and delivered not later than 10:15 a.m. on September 15, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than September 13, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed July 13, 2004. The case is now pending before this Court.
5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$178,437.00, as evidenced by that certain Promissory Note dated June 28, 2002, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated June 28, 2002, executed by Michael J. Howe and Tammy J. Howe, husband and wife, recorded July 11, 2002, as Document No. 798450, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325(a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of May, 2004 through July, 2004, in the total amount of \$6,771.82, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 28 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$220,000.00 subject to Secured Creditor's mortgage in excess of \$180,622.11.

11. The plan, as proposed, is not made in good faith by Debtor.

. . .

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 7th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO  
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT  
PURPOSE.

**NOTE**

FHA Case No.

271-8723372

Multistate  
AP# 5502021503June 28, 2002  
(Date)15525 79TH STREET NORTHEAST, OTSEGO, MN 55330  
(Property Address)**1. PARTIES**

"Borrower" means each person signing at the end of this Note, and the person's successors and assigns. "Lender" means ASSOCIATED BANK MINNESOTA, NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION

and its successors and assigns.

**2. BORROWER'S PROMISE TO PAY; INTEREST**

In return for a loan received from Lender, Borrower promises to pay the principal sum of One Hundred Seventy Eight Thousand Four Hundred Thirty Seven and no/100

Dollars (U.S. \$ 178,437.00), plus interest, to the order of Lender. Interest will be charged on unpaid principal, from the date of disbursement of the loan proceeds by Lender, at the rate of Six and Three / Quarters percent ( 6.7500 %) per year until the full amount of principal has been paid.

**3. PROMISE TO PAY SECURED**

Borrower's promise to pay is secured by a mortgage, deed of trust or similar security instrument that is dated the same date as this Note and called the "Security Instrument." The Security Instrument protects the Lender from losses which might result if Borrower defaults under this Note.

**4. MANNER OF PAYMENT****(A) Time**

Borrower shall make a payment of principal and interest to Lender on the first day of each month beginning on August 1, 2002. Any principal and interest remaining on the first day of July / 2032, will be due on that date, which is called the "Maturity Date."

**(B) Place**

Payment shall be made at 1801 RIVERSIDE AVENUE, MINNEAPOLIS, MN 55434

or at such place as Lender may designate in writing

by notice to Borrower.

**(C) Amount**

Each monthly payment of principal and interest will be in the amount of U.S. \$ 1,157.34. This amount will be part of a larger monthly payment required by the Security Instrument, that shall be applied to principal, interest and other items in the order described in the Security Instrument.

**(D) Allonge to this Note for payment adjustments**

If an allonge providing for payment adjustments is executed by Borrower together with this Note, the covenants of the allonge shall be incorporated into and shall amend and supplement the covenants of this Note as if the allonge were a part of this Note. [Check applicable box]

☐ Graduated Payment Allonge ☐ Growing Equity Allonge ☐ Other [specify]

**5. BORROWER'S RIGHT TO PREPAY**

Borrower has the right to pay the debt evidenced by this Note, in whole or in part, without charge or penalty, on the first day of any month. Lender shall accept prepayment on other days provided that Borrower pays interest on the amount prepaid for the remainder of the month to the extent required by Lender and permitted by regulations of the Secretary. If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of the monthly payment unless Lender agrees in writing to those changes.

FHA Multistate Fixed Rate Note - 1001  
-1M (6011.03)  
VNF MORTGAGE FORMS - (600821-7251)  
Page 1 of 2 VNF 01/08/03 Initials: *[Signature]*

**EXHIBIT** *A*

798450

Ag Preservation Land Fee Receipt # 123989.Registration Tax Receipt # 13090, in the  
amount of \$ 410.41, has been paid this  
Date: 7-11, Year: 2002

02 JUL 11 PM 1:41

Douglas M. Gruber, Auditor/Treasurer  
By: [Signature], clerk[Space Above This Line For Recording Date] 2002 JUL 11 10:58:03State of Minnesota  
AP# 5502021503

## MORTGAGE

PHA Case No. 27  
271-8723372THIS MORTGAGE ("Security Instrument") is given on June 28, 2002  
The Mortgagor is MICHAEL J HOWE AND TAMMY J HOWE, HUSBAND AND WIFE("Borrower"). This Security Instrument is given to ASSOCIATED BANK MINNESOTA, NATIONAL  
ASSOCIATION, A NATIONAL BANKING ASSOCIATIONwhich is organized and existing under the laws of MINNESOTA, and  
whose address is 1801 RIVERSIDE AVENUE, MINNEAPOLIS, MN 55434("Lender"). Borrower owes Lender the principal sum of  
One Hundred Seventy Eight Thousand Four Hundred Thirty Seven and no/100  
Dollars (U.S. \$ 178,437.00).This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments, with the full debt, if not paid earlier, due and payable on July 1, 2032  
and for interest at the yearly rate of 6.7500 percent. This Security  
Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,  
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph  
7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreementsFHA Minnesota Mortgage - 406  
1001 (R(MN)) (406), 01  
Page 1 of 1 MW 02/06.01 Initials: [Signature]  
MVP MORTGAGE FORMS - 0001521-7391EXHIBIT B

under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in WRIGHT County, Minnesota:  
 Lot 2, Block 3, Prairie Creek 5th Addition

which has the address of 15525 79TH STREET NORTHEAST, OTSEGO (Street, City),  
 Minnesota 55330 (Zip Code) ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

#### UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. **Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

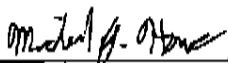

21. **Interest on Advances.** The interest rate on advances made by Lender under paragraph 7 shall not exceed the maximum rate allowed by applicable law.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. (Check applicable box(es)).

☐ Condominium Rider ☐ Growing Equity Rider ☐ Other (specify)  
☐ Planned Unit Development Rider ☐ Graduated Payment Rider

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____		_____ (Seal)
	MICHAEL J. HOWE	-Borrower
_____		_____ (Seal)
	TAMMY J. HOWE	-Borrower
_____ (Seal)	_____ (Seal)	
-Borrower	-Borrower	
_____ (Seal)	_____ (Seal)	
-Borrower	-Borrower	
_____ (Seal)	_____ (Seal)	
-Borrower	-Borrower	

STATE OF MINNESOTA, *Shenburne*

County as:

On this 28th day of June, 2002, before me appeared  
 MICHAEL J HOWE and TAMMY J HOWE, HUSBAND AND WIFE

*Michael*

, to me  
 personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that  
 they executed the same as their free act and deed.

My Commission Expires:  
 (Seal)

*[Signature]*  
 Notary Public

This instrument was drafted by TRACY L. MORGAN  
 Associated Bank  
 1801 Riverside Ave  
 Mpls, MN 55434

Tax statements for the real property described in this instrument should be sent to:

Return to:  
 Preferred Title, Inc.  
 113 West Broadway  
 P.O. Box 727  
 Monticello, Minnesota 55362  
 File # 051500

48(MIN) 05031.01

Page 2 of 2

*[Signature]*  
 Initials: MD

798450



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Michael J. Howe  
SSN XXX-XX-8413  
Tammy J. Howe  
SSN XXX-XX-0985

**CASE NO. 04-43862 RJK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 7, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Michael J. Howe  
Tammy J. Howe  
15525 79<sup>th</sup> St NE  
Otsego, MN 55330

Michael J. Farrell  
PO Box 519  
Barnesville, MN 56514

Jeffrey Michael Bruzek  
Prescott & Pearson  
443 Old Hwy 8 Ste 208  
New Brighton, MN 55112

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 7th day of September, 2004.

/e/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Michael J. Howe  
SSN XXX-XX-8413  
Tammy J. Howe  
SSN XXX-XX-0985

Debtor.

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**CASE NO. 04-43862 RJK**

This Chapter 13 Case came on before the Court on September 16, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed August 26, 2004, is denied.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court